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**FILED**

**MAY 23 2008**

PATRICK E. DUFFY, CLERK

By \_\_\_\_\_  
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

TESS L. SAUNIER, ) CV 08-37-M-DWM-JCL  
 )  
 Plaintiff, )  
 )  
 vs. ) ORDER  
 )  
 AETNA LIFE INSURANCE COMPANY, )  
 )  
 Defendant. )  
 )

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on April 28, 2008. the parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

This case is before the Court upon Defendant Aetna's removal of a civil matter initiated by Plaintiff Saunier in state court. Saunier alleges that she purchased health insurance as an

employee of Costco, Inc., and was wrongfully denied benefits under her policy. Saunier advances claims for breach of contract and unfair claims settlement practices in violation of Mont. Code Ann. § 33-18-201 et seq.

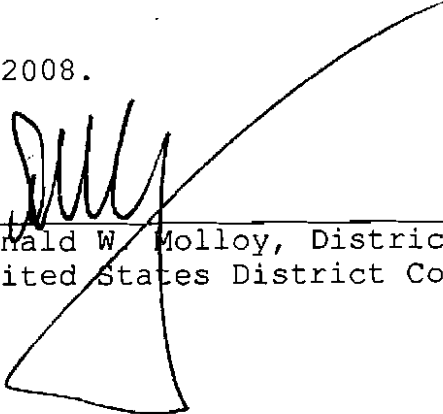
Defendant Aetna has filed a motion to dismiss on the ground that Plaintiff Saunier's state claims are preempted by ERISA. The Plaintiff has not responded to the motion. Judge Lynch reviewed the motion and concluded that this case should be dismissed for failure to state a claim because the claims advanced fall within ERISA's broad preemption provision. Judge Lynch further recommends that the dismissal be without prejudice.

I can find no clear error with Judge Lynch's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that Defendant Aetna's motion to dismiss (Doc. No. 4) is GRANTED without prejudice to refiling.

IT IS FURTHER ORDERED that Plaintiff Saunier shall have twenty days from the date of this Order in which to file an amended complaint alleging claims under ERISA's specific civil enforcement provisions.

DATED this 23<sup>rd</sup> day of May, 2008.

  
\_\_\_\_\_  
Donald W. Molloy, District Judge  
United States District Court